

Proposed Preamble

The Texas Department of Transportation (department) proposes the repeal of §§11.50-11.53 concerning access driveways to state highways and simultaneously proposes new §§11.50-11.55 concerning access connections to state highways.

EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

Transportation Code, Chapter 203, provides that the Texas Transportation Commission (commission) may lay out, construct, maintain, and operate a modern state highway system. Access management is one method of preserving the substantial investment in the ground transportation system by preserving the roadway level of service.

Due to the significant cost associated with the construction and maintenance of highways, it is imperative that highways provide maximum traffic handling capacity and reasonable access for as long as practical. Adjacent development and uncontrolled access points along highways can contribute to congestion and early deterioration of the operation of the highway, thereby reducing the ability of the state highway system to safely and efficiently move higher volumes of traffic.

Access management is an engineering and planning method of balancing the needs of mobility and safety on a highway system

with the needs of access to adjacent land uses. Access management can significantly enhance traffic safety by reducing traffic accidents, personal injury, and property damage. It has been noted that access management promotes a more coordinated intergovernmental, long term approach to land use and transportation decisions in the context of quality of life, economic development, livable communities, and public safety.

Given the benefits to the ground transportation system and public safety, this subchapter promotes the use of access management on highways under the jurisdiction of the department.

Existing §§11.50-11.53 provide the current regulations for access driveways to state highways. Section 11.50 includes definitions for public, commercial, and private access driveways. Section 11.51 outlines the safety and operational basis for determining access driveways locations and the purpose they serve. Section 11.52 outlines the responsibilities for construction and maintenance of access driveways. Section 11.53 describes the conditions under which these rules apply. These sections are proposed for repeal and are to be replaced by the proposed new language in §§11.50-11.55.

New §11.50 describes the purpose and need for access management. This section also describes the application of this subchapter,

the effective date, and provides for a transition period.

New §11.51 defines terms used in this subchapter.

New §11.52 describes the potential delegation of access location permit authority to local public agencies. The intent is to allow local public agencies that have formally adopted access management plans approved by the department, to have the authority to decide the location of access connections to highways that are within the jurisdiction of the local public agency. Subsection (a) does not apply to highways or highway segments where the department controls the access. This section also describes the general engineering requirements for locally permitted access connections.

New §11.53 describes the process for making access purchase requests where the department controls the access. The commission will make the final determination regarding the request to purchase access.

When the commission approves the sale of access, the sale will be accomplished under Transportation Code, Chapter 202, Subchapter B. Access points approved by the commission under subsection (c) of §11.53 will be specifically described by a metes and bounds property description.

New §11.54 describes the construction and maintenance requirements for approved access connection facilities. Since a commercial or private access driveway benefits primarily the property owner, the permittee is responsible for all costs associated with the construction and maintenance of the driveway. Since public access driveways benefit both the permittee and the traveling public, the department will maintain these facilities within the state highway right of way if these facilities connect to highways that are the maintenance responsibility of the department and provided that the permittee pays for the cost of materials and installation of the driveway.

Since access driveways are sometimes destroyed or removed as part of highway construction, §11.54 provides that the department will reestablish reasonable access.

To ensure the safety of the traveling public, this section also provides that the department may undertake actions deemed necessary to correct drainage or safety problems relating to existing or new access connection facilities.

To ensure that the department considers all reasonable alternatives during project development, new §11.55 provides that the department may construct local access roads when

necessary to restore circulation, to resolve a landlock condition on a remaining parcel of land, or when it will otherwise benefit the state highway system. The section provides that commission approval must be obtained prior to the department entering into any agreements to provide local access roads in conjunction with a department project.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals and new sections are in effect, there will be no direct fiscal implications for state or local governments as a result of enforcing or administering the repeals or new sections. There are no anticipated economic costs for persons required to comply with the repeals and new sections as proposed.

Ken Bohuslav, P.E., Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new sections.

PUBLIC BENEFIT

Mr. Bohuslav has also determined that for each year of the first five years the repeals and new sections are in effect, the public benefits anticipated as a result of enforcing or

administering the repeals and new sections will be that interested parties will find the information related to access connections to state highways is conveniently located in Chapter 11. Due to the fact that improved safety and mobility on state highways will improve traffic circulation in adjacent areas, there will be no adverse effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct three public hearings to receive comments concerning the proposed repeals and new sections. Each public hearing will begin at 6:00 p.m. on the following dates and at the following locations:

July 23, 2003: Irving City Hall; Council Chambers; 825 West Irving Blvd.; Irving, Texas 75060.

July 28, 2003: Bass Lecture Hall; 24th and Red River Streets; Austin, Texas 78713.

July 29, 2003: Houston-Galveston Area Council, Meeting Room A, 3555 Timmons Lane; Houston, Texas 77027.

These public hearings will be conducted in accordance with the

procedures specified in 43 TAC §1.5. Those desiring to make official comments or presentations may register starting at 5:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content.

Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at

least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed rules may be submitted to Ken Bohuslav, P.E., Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

STATUTORY AUTHORITY

The repeals and new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

No statutes, articles, or codes are affected by the proposed repeals and new sections.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101

SUBCHAPTER C. ACCESS DRIVEWAYS TO STATE HIGHWAYS

§11.50. Definitions. The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commercial driveway--An entrance to, or exit from, any commercial, business, or similar type establishment.

(2) Grantee--The property owner or his or her authorized representative who is granted a driveway permit by the department to construct or modify an access driveway from the property to a highway under the jurisdiction of the department.

(3) Private driveway--An entrance to, or exit from, a residential dwelling, farm, or ranch for the exclusive use and benefit of the grantee.

(4) Public access driveway--All approaches from county or city maintained roads and streets, and approaches to schools, cemeteries, and other public places or buildings of a like character.

§11.51. Access Driveway Facilities.

(a) Access facilities shall be for the bona fide purpose of securing access to abutting property and shall not be for the purpose of parking or servicing on highway right-of-way.

(b) Location and design of access driveways shall be

selected to provide maximum safety for highway traffic and for users of the driveway facility.

(c) Principles of traffic channelization shall be applied in the design of entrance and exit driveways with their width limited to that necessary for adequate access.

(d) Safety zones shall be established between entrance and exit drives, at intersections and at other places when needed to preserve lateral sight distance, channelization of traffic flow, and for safety of pedestrians.

(e) Drainage in highway side ditches shall not be altered or impeded. When drainage structures are required, size of opening and other design features shall be approved by the department.

§11.52. Access Driveway Facilities Outside the Corporate Limits of Municipalities.

(a) For commercial and private driveways, the cost of materials, installation and maintenance shall be the responsibility of the grantee.

(b) For public driveways, the cost of materials and installation shall be the responsibility of the grantee. The department shall maintain all portions of public access driveways which lie within the state highway right of way and

NOTE: Repeal

which are the maintenance responsibility of the department.

§11.53. Applicability.

(a) These departmental rules shall apply to all future access driveway facilities which are constructed on highways under the jurisdiction of the Texas Department of Transportation. They shall also apply to existing driveways which may be destroyed or removed and then rebuilt.

(b) Any existing driveway facilities which are destroyed or removed in the construction or reconstruction of a section of highway will be replaced or reconstructed by the department to a design within these regulations and a condition equal to or better than the original facilities.

(c) The department may undertake actions deemed necessary to correct drainage or safety problems related to existing or new driveway facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30,
2003.

Richard D. Monroe
General Counsel
Texas Department of Transportation

SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

§11.50. Access Management.

(a) Purpose and need. Access management is an engineering and planning method of balancing the needs of mobility and safety on a highway system with the needs of access to adjacent land uses. Access management is one method of preserving the substantial public investment in the ground transportation system by preserving the roadway level of service. Further, access management can significantly enhance traffic safety by reducing traffic accidents, personal injury, and property damage. It has been noted that access management practices can promote a more coordinated intergovernmental, long term approach to land use and transportation decisions in the context of quality of life, economic development, livable communities, and public safety. Given the benefits to the ground transportation system and public safety, it is the intention of the department to promote the use of access management on highways under the jurisdiction of the department.

(b) Applicability. This subchapter applies to all new access connections constructed on highways under the jurisdiction of the department. It also applies to existing access connections that may be reconstructed or otherwise modified as part of a department project.

(c) Effective date. The provisions of this subchapter are effective January 1, 2004.

(d) Transition period. Prior to January 1, 2005, exceptions to the provisions of this subchapter may be granted for specific access connection requests where significant prior commitments have been made under previous department policy.

§11.51. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access connection--Facility for entry and/or exit such as a driveway, street, road, or highway that connects to the highways under the jurisdiction of the department.

(2) Commercial driveway--An entrance to, or exit from, any commercial, business, or similar type establishment.

(3) Commission--The Texas Transportation Commission.

(4) Department--The Texas Department of Transportation.

(5) Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the highways under the jurisdiction of the department.

(6) Local access management plans or guidelines--Plans or guidelines related to the application of access management adopted by a local government that are based on sound engineering and accepted access management principles and provide for reasonable access while ensuring the mobility and safety of roadways within its jurisdiction.

(7) Local access road--A local public street or road, generally one parallel to a highway under the jurisdiction of the department to which access for businesses or properties located between the highway and the local access road is provided as a substitute for access to the highway. A local access road may also be called a lateral road or reverse frontage road, depending on individual location and application.

(8) Permittee--A property owner or its authorized representative who receives an access connection permit from the department to construct or modify an access connection from the property to a highway under the jurisdiction of the department.

(9) Private driveway--An entrance to, or exit from, a residential dwelling, farm, or ranch for the exclusive use and benefit of the permittee.

(10) Public driveway--An approach from a county or city maintained road or street or an entrance or exit from a public school, a publicly owned cemetery, or other publicly owned

places or buildings that provide for public access.

(11) Traffic impact analysis (TIA)--A traffic engineering study to the level of analysis determined by the department that determines the potential current and future traffic impacts of a proposed traffic generator and is signed, sealed, and dated by an engineer licensed to practice in the State of Texas.

§11.52. Delegation of Access Location Permit Authority to Local Public Agencies.

(a) Intent. The intention of the department is to allow local public agencies that have formally adopted access management plans or guidelines approved by the department to decide the location of access connections to highways that are within the jurisdiction of the local public agency. The local public agency's access management plans or guidelines must be based on sound engineering and accepted access management principles. This subsection does not apply to highways or highway segments where the adjacent property owner has no right of access.

(b) Engineering. Granting access location permit authority to local public agencies does not preclude the need to properly engineer access locations. Any impacts to drainage or hydraulics on highways under the jurisdiction of the department

resulting from access connections must be approved by the department prior to any local access approval. Consideration must also be given to the actual driveway geometrics, utility location or relocation, compliance with the Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS), environmental requirements, wetland considerations if appropriate, and all applicable state and federal laws, rules, and regulations.

§11.53. Locations Where the Department Controls the Access.

(a) Access purchase requests. Where new access connections are requested on highways where the adjacent owner has no existing right of access, requests to purchase access will be considered under the provisions of this section. The request must include an engineering study acceptable to the department.

(b) Approval. The commission will make the final determination concerning new access connections under this section. The commission may consider the findings of the engineering study and the mobility and safety of the highway system, or any other relevant factors.

(c) Documentation. When the commission approves the sale of access to the owner of property adjoining the highway facility, the sale will be accomplished under Transportation

Code, Chapter 202, Subchapter B. Access points approved by the commission under this subsection will be specifically described by a metes and bounds property description.

§11.54. Construction and Maintenance of Access Connection Facilities.

(a) For commercial and private driveways, the cost of materials, installation, and maintenance shall be the responsibility of the permittee.

(b) For public driveways, the cost of materials and installation shall be the responsibility of the permittee. The department shall maintain all portions of public access driveways that lie within the state highway right of way and that connect to highways that are the maintenance responsibility of the department.

(c) Any existing access connections that are destroyed or removed in the construction or reconstruction of a section of highway will be reestablished by the department to the extent that they will provide reasonable access.

(d) The department may undertake actions deemed necessary to correct drainage or safety problems related to existing or new access connection facilities.

§11.55. Local Access Roads.

(a) If local access roads are necessary to restore circulation or to resolve a landlock condition on a remaining parcel of land, or will otherwise benefit the highway system under the jurisdiction of the department, local access roads may be included in a department project on a standard participation basis as established in Appendix A of §15.55 of this title (relating to Construction Cost Participation).

(b) Commission approval must be obtained prior to the department entering into any agreements to provide local access roads in conjunction with a department project.

(c) Local access roads will not be considered service projects as defined in §15.56 of this title (relating to Local Financing of Highway Improvement Projects on the State Highway System).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30,
2003.

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